

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ISRAEL BENITEZ GARCIA, et al.,

Plaintiffs,

v.

ADALBERTO GONZALEZ, et al.,

Defendants.

CIVIL NO. 04-1955 (JP)

**MOTION REQUESTING SANCTIONS AGAINST PLAINTIFFS FOR LACK OF
COMPLIANCE WITH THIS HONORABLE COURT'S
FURTHER INITIAL SCHEDULING ORDER**

TO THE HONORABLE COURT:

COMES NOW co-defendants Commonwealth of Puerto Rico and the Department of Education, through the undersigned attorney, and very respectfully sets forth and prays as follow:

1. On June 13, 2007, a Further Initial Scheduling Conference was held. See Docket No. 137. As part of said Conference, this Honorable Court issued several preliminary orders. See Docket No. 137, at pages 5-6.

2. In the Further Initial Scheduling Order, this Honorable Court instructed the plaintiffs to “[O]n or before September 13, 2007 the plaintiffs must produce to the defendants the medical records of treatment the plaintiffs received due to acts alleged in the complaint. Failure to comply with this order will result in dismissal with prejudice of each plaintiff’s case for which such medical records exist, and for which the deadline was not met.” See Docket No. 137, page 6, ¶ F.

3. Plaintiffs have failed to comply with this Order, and up to this date, have failed to provide any type of medical record as to the alleged treatment they received due to the acts alleged in the complaint.

4. Plaintiffs failure to provide the required discovery has cause undue prejudice to the

appearing co-defendants, specifically regarding the inability to properly prepare to address the damages allegedly suffered by the plaintiffs. The failure to provide this information has denied appearing co-defendants the opportunity to evaluate the alleged damages of the plaintiffs, and prepare effectively any defense against these allegations.

5. Plaintiffs' non-compliance with this Honorable Court's Further Initial Scheduling Order calls for a severe sanction, and in this case, the sanction should be the dismissal of the complaint as to those plaintiffs who claimed to have been receiving medical treatment and did not provide their records. It just happens that all student plaintiffs allege that they received medical treatment due to the alleged acts of co-defendant Adalberto Gonzalez Vega. Therefore, plaintiffs' failure to provide these records should lead to the dismissal of the complaint, as set forth in this Honorable Court's Further Initial Scheduling Order.

6. In the alternative, if this Honorable Court understands that the dismissal of the complaint would be too harsh, the appearing co-defendants respectfully request that plaintiffs be sanctioned for their non-compliance by not allowing any testimony on their part regarding any alleged medical treatment and any damages suffered by the alleged acts of co-defendants Gonzalez Vega which lead to their seeking of medical treatment. This sanction would be a just sanction, even more when plaintiffs' failure to provide this information did not allow co-defendants to properly prepare for this case.

WHEREFORE, it is respectfully requested from this Honorable Court that it take notice of this motion and dismiss plaintiffs' complaint with prejudice given plaintiffs' non-compliance with this Honorable Court's Further Initial Scheduling Conference Order, or in the alternative, deny plaintiffs the opportunity to present any evidence as to damages allegedly suffered by them and for which the sought medical treatment.

I HEREBY CERTIFY that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record to their respective electronic addresses of record.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 20th day of May, 2008.

ROBERTO J. SANCHEZ RAMOS
Secretary of Justice

VIVIAN GONZALEZ MENDEZ
Deputy Secretary
In Charge of Litigation

S/ Francisco A. Ojeda-Diez
FRANCISCO A. OJEDA-DIEZ
U.S.D.C. NO. 211108
General Litigation Office
Department of Justice
P.O. Box 9020192
San Juan, PR. , 00902-0192
Tel. (787) 721-2900, Ext. 2669
Fax: (787) 723-9188
E-mail: fojeda@justicia.gobierno.pr
fojedadiez@hotmail.com

FAO
H: Motion for sanctions